

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

MARCUS BURRELL,

Case No. 2:18-cv-00037-JCM-CWH

Petitioner,

ORDER

v.

WARDEN, HIGH DESERT STATE
PRISON, et al.,

Respondents.


Petitioner Marcus Burrell initiated his *pro se* petition for a writ of habeas corpus on or about January 8, 2018. (ECF No. 6.) This court screened the petition, denied his request for the appointment of counsel, and instructed the clerk to serve the petition on respondents. (ECF No. 5.) Before respondents filed a response, Burrell moved for a stay. (ECF No. 8.) On September 21, 2018, this court granted the motion, ordering Burrell to “return to this court with a motion to reopen within forty-five (45) days of issuance of the remittitur by the Nevada Supreme Court at the conclusion of the state court proceedings.” (ECF No. 11 at 2.) Respondents now move to reopen this case and dismiss it based on Burrell’s failure to prosecute, Burrell’s failure to comply with this court’s order staying these proceedings, and the conclusory nature of his claim. (ECF Nos. 16, 17.) In their motions, respondents explain that (1) there has been no action from Burrell in either state or federal court in over two years, and (2) Burrell has not filed a state habeas petition challenging his conviction and/or sentence since the stay was ordered. (ECF No. 17.) The court

1 orders Burrell to show cause why this action should not be dismissed for failure to prosecute¹
2 and/or failure to comply with the court's order September 21, 2018, order.

3 IT IS THEREFORE ORDERED that the motion to reopen [ECF No. 16] is **GRANTED**.
4 The Clerk of the Court is directed to lift the stay and administratively reopen this case.

5 IT IS FURTHER ORDERED that Petitioner Marcus Burrell has 30 days from the date of
6 this order to show cause why this action should not be dismissed for failure to prosecute and/or for
7 failure to comply with the court's September 21, 2018, order. After Burrell responds to this order
8 to show cause, respondents will have 30 days to file a response, and Burrell will then have 15 days
9 to file a reply.

10 Dated: April 25, 2023.

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12 JAMES C. MAHAN
13 UNITED STATES DISTRICT JUDGE
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22 ¹ See Fed. R. Civ. P. 41(b) ("If the plaintiff fails to prosecute or to comply with these rules or a
23 court order, a defendant may move to dismiss the action or any claim against it. Unless the
dismissal order states otherwise, a dismissal under this subdivision . . . operates as an adjudication
on the merits.").